

*Romar Communications Inc.*

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July 22, 1996

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

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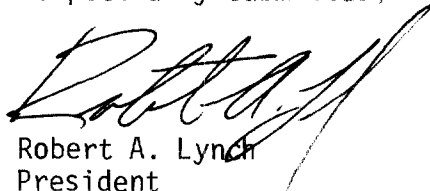
Dear Mr. Caton:

Transmitted herewith are the original and ten (10) copies of our company's Formal Comment in the Notice of Inquiry in General Docket 96-113, the Inquiry into Identifying and Eliminating Market Entry Barriers for Small Business.

As the number of copy submissions indicates, we request each Commissioner receive a copy of our pleading.

We trust our opinions and perspectives will be given thoughtful consideration.

Respectfully submitted,

  
Robert A. Lynch  
President

Encl.

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Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED  
JUL 23 1996  
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General Docket No. 96-113  
Notice of Inquiry

In the Matter of: )  
Identifying and Eliminating )  
Market Entry Barriers for )  
Small Businesses )

To: The Commission

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FORMAL COMMENT

Romar Communications Inc. ("Romar") hereby submits its Formal Comment in the Notice of Inquiry (NOI) initiated by the Commission in General Docket No. 96-113, said proceeding to examine barriers to small business entry into the telecommunications marketplace. As the NOI states, this inquiry commences a study mandated by Section 101 of the Telecommunications Act of 1996 which added a new Section 257 to the Communications Act of 1934. Section 257 requires the Commission, within 15 months after enactment, to complete a proceeding "for the purpose of identifying and eliminating, by regulations pursuant to its authority under this act...market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services." Romar notes with emphasis that Section 257 mandates the Commission implement its revisions to "promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition,

technological advancement, and promotion of the public interest, convenience and necessity."

Romar offers its opinions as a small entrepreneural corporation seeking its first radio broadcast license. It acknowledges the NOI is wide-ranging in scope and addresses all areas of communications from telephone to broadcast. For the sake of brevity and accuracy, Romar will only comment on those issues to which Romar or its principals have a direct interest or immediate familiarity. And it submits its comments not so much for its own advancement, but to facilitate a regulatory environment in which small communications businesses are encouraged, diversity is increased, and the public interest is promoted.

#### COMMENTER'S QUALIFICATIONS

By virtually any standard, Romar Communications Inc. qualifies for classification as a small communications business. Romar was established in March 1987 for the express purpose of seeking application to one or more radio broadcast stations. Its two sole shareholders are its president, Robert A. Lynch, now 45, and his sister and vice president, Marcia E. Lynch, 43. Both are average middle-income citizens with extensive broadcast backgrounds, primarily in broadcast journalism, programming and operations management, much of that experience gained in their chosen market, Ithaca/Tompkins County, NY. Romar's financial assets currently consist entirely of the shareholders' combined contributions. In March 1987, Romar

submitted its first broadcast application, BP-870331AH, seeking permission for a new, full-time AM broadcast station in the Tompkins County community of Lansing, NY. The application was dismissed by Commission staff in March 1989 due to Romar's immediate inability to secure required financial backing. Even though financial qualifications were subsequently secured, the dismissal's reconsideration was denied one year later. In April 1990, the Lansing, NY AM application was resubmitted, essentially unaltered, but was returned by staff on technical grounds. A Petition for Reacceptance was filed in July 1990; but after a more than five-year delay, that petition was dismissed in November 1995. Meanwhile, in April 1988, Romar tendered application BPH-880407MV which sought a new FM station at Homer, NY, one of the new allocations created by MM Docket 80-90. For reasons both personal and strategic, Romar relinquished its pursuit of the Homer station through an August 1990 Settlement Agreement.

Though Romar currently holds no broadcast license or construction permit, nor does it have any broadcast application before the Commission for review, it remains in active pursuit of broadcast ownership through either application or purchase. Preferably, such opportunity may arise in or near its chosen community. Attainment of this objective will depend upon productive allocations research, sufficient financing and a favorable regulatory environment. Nonetheless, regardless of the outcome, Romar's perspective, tempered by its setbacks, should prove valuable to the Commission as it studies ways to expand small business opportunities in communications.

### OVERVIEW

Romar will be blunt. In the opinion of its two principals, small business opportunities in radio have suffered greater setbacks in the past year than during any time in recent decades. Sometimes, headlines say it all. In heralding the mammoth CBS-Infinity radio merger June 24th, Broadcasting & Cable proclaimed, "Say Goodbye to Mom and Pop Radio." Yet neither that publication, nor legislators, nor regulators, nor the industry seems to shed a tear. Certainly, neither CBS nor Infinity Broadcasting are small businesses. But the frenzied consolidation of radio ownership following passage of the Telecommunications Act of 1996 has shrunk the number and diversity of voices and driven the industry into a "devour or be devoured" mindset. In this environment, the lesser-capitalized, smaller broadcaster will be the first to go. And the public interest will suffer. It's ironic that the same Telecommunications Act that produced this NOI is the one whose relaxed ownership concentration limits has allowed this hectic trading. More ironic still is that the Telecommunications Act was engineered by a Congress whose new majority was elected on a plank of expanding entrepreneural opportunity. In part, the damage may have been unintentional, since Congress left it to the Commission to implement the ownership standards; and as Romar will discuss later, it maintains FCC regulation has failed to keep pace with federal law.

A second, perhaps even more dangerous, obstacle looms for the small broadcaster, that being the prospect of broadcast spectrum auctions. The 1995 Budget Reconciliation Act, vetoed

by the President, and never adopted in final form, called for the placement of all mutually-exclusive commercial broadcast applications into government auctions. In Romar's opinion, such auctions would effectively exclude from the bidding smaller, lesser-capitalized applicants who would face insurmountable competition from wealthy, established companies, some of whom may also be existing market licensees. Auctions would close the door to the last, best hope new start-up companies have toward gaining access to the public airwaves. Auctions betray the public trust.

With its foremost concerns stated, Romar will now divide its comments into three principal categories:

- 1) Market concentration issues; 2) Spectrum auctions; and
- 3) Other matters.

#### MARKET CONCENTRATION ISSUES

Romar recognizes the local and national market concentration limits for radio are locked into federal law; and are therefore beyond the Commission's immediate control. During 1995, Romar worked with Congressional leaders and its local representatives to develop compromise language far more acceptable than the total elimination of local radio ownership caps first proposed. If properly implemented by the Commission, this compromise could fairly balance commercial interests with the public's right to diversity and the small entrepreneur's opportunity for access. Unfortunately, the Commission has continued to adhere to the outmoded standard of using overlapping city-grade contours of a potential co-owned duopoly to establish market size and a duopoly's compliance. Mr. Lynch, Romar's president, serves

professionally as a consulting engineer with Independent Broadcast Consultants, Inc., Trumansburg, NY; and is highly familiar with the "overlapping contour" standard, having utilized it on behalf of various clients. As such, he recognizes the standard's total inappropriateness in the post-"Telco '96" environment. If nothing else, the standard discriminates against the licensees of lesser-powered stations, often smaller entrepreneurs. For example, the licensee of a 50 kW. Class A AM and a 100 kW. Class C FM would likely find overlap between his contours and those of many more other stations than would the licensee of a stand-alone 3 kW. Class A FM in the same community. The discrepancy would likely place the smaller operator into a smaller so-called "market" under Commission standard, and thereby leave him at a competitive disadvantage in terms of expansion. Further, it's Romar's position that use of the overlapping contour standard to implement present law unintentionally creates monopolies or near-monopolies in many communities, thereby allowing far greater levels of ownership concentration than Congress intended. For the new broadcast entrepreneur, this threat of predatory monopolistic competition may impose the most chilling economic barrier to station ownership.

If broadcast diversity is to be preserved and new entrepreneural opportunities encouraged, the Commission must repeal its overlapping contour standard for market classification and duopoly evaluation. Romar offers two alternatives. One choice would simply classify radio broadcast markets by Arbitron metro survey area, or a suitable substitute in non-Arbitron rated markets. The number of market stations would consist of the

number licensed within the Arbitron metro. An alternative would retain part of the overlapping contour method, but define a market on the basis of the number of city-grade contours encompassing the community of license (or at least 80% thereof.) These reforms would work to put all of a community's broadcasters on a more equal footing and would discourage de-facto monopolies. Romar encourages other commenters to suggest viable alternative methods for market definition. But we encourage the Commission to act quickly to implement any change, lest independent voices disappear far faster than even at present.

#### BROADCAST SPECTRUM AUCTIONS

Romar passionately believes that a broadcaster's foremost obligation remains to serve the "public interest, convenience and necessity." Should it succeed in achieving station ownership, it will place that obligation before any other, including profit. Radio broadcasting, therefore, carries far different obligations than do PCS, cellular, satellite or other strictly for-profit services. Broadcasters stand as guardians of the First Amendment; and Romar believes they must also shoulder ethical obligations of fairness, public service and community access. Accordingly, a dollar-based method for dispensing cellular telephone or PCS licenses becomes totally inappropriate in the broadcast arena. The First Amendment should never be sold to the highest bidder. Moreover, as referenced earlier, Romar maintains the auction of new broadcast licenses, alluded to in Commission and Congressional circles and embodied in last year's budget draft, would



deny smaller, lesser-capitalized applicants effective access to such stations. Though much maligned of late by critics, the flood of new Class A FM stations created by MM Docket 80-90 and the liberalized allocation rules which accompanied it have, in Romar's opinion, created tremendous opportunities for new broadcast entrepreneurs over the past decade. Indeed, it may be argued that Docket 80-90 facilitated the largest infusion of new entrepreneurial blood in radio's history. While most "80-90" stations have now been assigned, Congress and the Commission must keep open continued opportunities for the few, new allocations that do open up. Expansion of the Commission's auction to broadcasting would defeat that objective.

#### OTHER MATTERS

##### I. SMALL BUSINESS FINANCING:

As referenced above, Romar's initial AM application, BP-870331AH, was dismissed due to Romar's inability to secure timely financing. At the time of the 1987 filing, federal law, since repealed, imposed a prohibition on Small Business Administration loan guarantees for broadcast enterprises. There's no basis to argue that dollar-for-dollar, a radio station should be harder to finance than a Chinese restaurant or corner bar. Today's SBA loan policies enable easier broadcast financing than in 1987. And Romar encourages the Commission to foster and advocate continuation of SBA broadcast loan programs, even in the face of criticism by a misguided few who might label such financing as "corporate welfare." Easy access to start-up capital stands as a critical factor in determining whether broadcast ownership dreams become reality.

## II. MINORITY/FEMALE PREFERENCES:

Romar Communications Inc. is neither minority nor female controlled (though Ms. Lynch holds 49% ownership.) Nonetheless, Romar has no quarrel with the continuation of reasonable minority or female preference policies, so long as they remain consistent with federal law and Constitutional interpretation. However, Romar does encourage the Commission to police such preferences against abuse. As consulting engineer, Romar's president has observed instances in which a minority or female applicant has tendered an application, secured a construction permit, then quickly sold his or her interest to a white, male financial backer. Such abuse of process must stop. Romar suggests one potential remedy would be the imposition of minimum ownership periods, perhaps as long as three-to-five years, for anyone who claimed female or minority preferences during comparative review.

## III. FINDER'S PREFERENCE:

In Romar's opinion, it is the aggressive, innovative entrepreneur who is disproportionately responsible for finding new FM broadcast allotments and then petitioning for their creation. But at present, such "finder" enjoys no advantage during comparative review. Romar suggests the Commission re-examine a proposal advanced several years ago, to award a "finder's preference" to such applicants, thereby encouraging the technical discovery of new broadcast spectrum opportunities.

## IV: INTERFERENCE POLICIES:

As engineering standards for allocation, Commission Rules generally prohibit the creation or receipt of prohibited

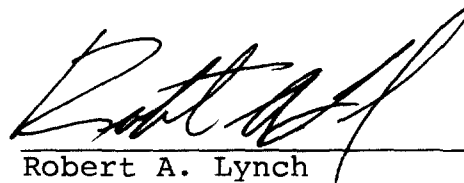
interference. However, prior to adoption of the "New AM Rules" with MM Docket 87-267, applicants proposing first service to certain communities were allowed to receive limited levels of interference within their otherwise-protected AM contours. Toward the objective of promoting additional opportunities in radio broadcasting, Romar suggests the Commission revisit its technical rules to consider whether designated small business enterprises might be allowed to receive (but not contribute) limited levels of interference.

#### CONCLUSION

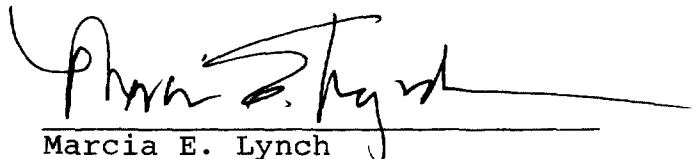
Romar Communications Inc. welcomes the Commission's and Congress' recognition of small business' contribution to the telecommunications field. But Romar fears that in radio broadcasting, this impact is contracting, rather than expanding. We urge the Commission thoughtfully, yet expeditiously, consider the comments offered here, not only toward the advancement of entrepreneurial opportunities, but toward the furtherance of the public interest, convenience and necessity. We look forward to the Commission's response.

Respectfully submitted,

July 22, 1996



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President  
Romar Communications, Inc.



Marcia E. Lynch  
Vice President  
Romar Communications Inc.